



City of Seattle

Department of Planning and Development

D. M. Sugimura, Director

CITY OF SEATTLE ANALYSIS AND DECISION OF THE DIRECTOR OF THE DEPARTMENT OF PLANNING AND DEVELOPMENT

Application Number: 3010805
Applicant Name: Alan Foltz
Address of Proposal: 5655 NE Windermere Road

SUMMARY OF PROPOSED ACTION

Shoreline Substantial Development Application to allow a 366 sq. ft. residential pier in an environmentally critical area.

The following approval is required:

Shoreline Substantial Development Permit –To allow grading and construction of a retaining wall in an Urban Residential shoreline environment. - (SMC 23.60.020)

SEPA – Environmental Determination – (Chapter 25.05 SMC)

SEPA DETERMINATION: ☐ Exempt ☐ DNS ☐ MDNS ☐ EIS
☒ DNS with conditions
☐ DNS involving non-exempt grading, or demolition, or another agency with jurisdiction.

BACKGROUND DATA

Site & Area Description

The subject site is located on NE Windermere Road near the intersection with NE Ambleside Road, at the east edge of the Windermere neighborhood in northeast Seattle. Lake Washington is located to the east. All other nearby properties are zoned and developed as single family residential.

The area is located in and surrounded by Single Family zoning (SF 9600). This property and the dry land areas of adjacent properties bordering Lake Washington are designated Urban

Residential shoreline environment. All land waterward of the Ordinary High Water Mark at the shoreline is designated Conservancy Recreation (CR) shoreline environment.

Environmentally critical areas are located on site, including a steep slope, steep slope buffer, potential slide area, known slide areas, wildlife, and shoreline habitat buffer. The site is also located in a Meander Line Buffer, which indicates the area of the original shorelines of Seattle and the potential for archaeological deposits.

Proposal

The applicant proposes to construct a new 366 square foot pier. The proposed pier measures 85' long and varies from 3'10"-4'10" in width. The structure would be located 2'9" above the Ordinary High Water Mark and would have a fully grated surface fixed on 7 steel piles and glulam beams.

Mitigation for the new overwater coverage is proposed in the form of native plants near the shoreline at this site. The planting plan is shown in the Master Use Permit plan sets and is subject

to a Monitoring and Maintenance Plan, also included in the plan sets. Proposed mitigation planting includes western Washington native plants (three 2-gallon Vine Maple trees, three 1-gallon Ocean Spray shrubs, five 1-gallon Red Flowering Currant, seven 1-gallon Evergreen Huckleberry, 42- 2.5" Kinnikinick planted 18" on center, 36 - 2.5" Wild Ginger planted 24" on center, 36 - 4" Salal planted 24" on center, and 36 - 4" Low Oregon Grape planted 24" on center).

Public Comments

Public notice of the proposal was issued on November 19, 2009. DPD received two public comments with concerns about removal of existing vegetation and impacts from additional over water coverage.

ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

Substantial Development Permit Required

Section 23.60.030 of the Seattle Municipal Code provides criteria for review of a shoreline substantial development permit and reads: A substantial development permit shall be issued only when the development proposed is consistent with:

A. *The policies and procedures of Chapter 90.58 RCW;*



For illustrative purposes only

- B. *The regulations of this Chapter; and*
- C. *The provisions of Chapter 173-27 WAC.*

Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and the Shoreline Management Act.

A. THE POLICIES AND PROCEDURES OF CHAPTER 90.58 RCW

Chapter 90.58 RCW is known as the Shoreline Management Act of 1971. It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy contemplates protecting against effects to public health, the land use and its vegetation and wild life, and the waters of the state and their aquatic life, while protecting public right to navigation and corollary incidental rights. Permitted uses in the shoreline shall be designed and conducted in a manner to minimize, insofar as possible, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

The Shoreline Management Act provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on insuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle adopted a local shoreline master program, codified in the Seattle Municipal Code at Chapter 23.60. Development on the shorelines of the state is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions. As the following analysis will demonstrate, the subject proposal is consistent with the procedures outlined in RCW 90.58.

B. THE REGULATIONS OF CHAPTER 23.60

The regulations of SMC, Section 23.60.064 require that the proposed use(s): 1) conform to all applicable development standards of both the shoreline environment and underlying zoning; 2) are permitted in the shoreline environment and the underlying zoning district and 3) satisfy the criteria of shoreline variance, conditional use, and/or special use permits as may be required.

SMC 23.60.004 - Shoreline Policies

The Shoreline Goals and Policies which are part of the Seattle Comprehensive Plan's Land Use Element and the purpose and locational criteria for each shoreline environment designation contained in SMC 23.60.220 must be considered in making all discretionary decisions in the shoreline district.

The policies support and encourage the protection and enhancement of natural areas on waterfront lots. Land Use element policy LUG48 requires, "Preserve, protect and restore areas such as those necessary for the support of wild and aquatic life or those identified as having

geological or biological significance. The site is located within several environmentally critical areas of biological significance, as described above.

The site is also located within an Urban Residential shoreline environment. This designation is listed in the Seattle Municipal Code and the area is referenced in the Comprehensive Plan. The designation is intended to protect residential areas (SMC 23.60.220.B.6). Therefore, the proposed project, as conditioned, would conform to the policies of the comprehensive plan and would be consistent with the purpose of the UR designation.

Development Standards

The applicant proposes to build an 85' long fully grated pier over the water, and plant western Washington native plants near the shoreline. This activity is permitted outright in SMC 23.60.600 governing the US shoreline environment. This activity is permitted outright in SMC 23.60.540 governing the UR shoreline environment. The proposed action is therefore subject to:

1. *General development standards for all shoreline environments (SMC 23.60.152);*
2. *Development standards for piers and docks accessory to residential use (SMC 23.60.204);*
3. *Development standards for uses in the UR environment (SMC 23.60.540);*
4. *Development standards for Single Family Residential zones (SMC 23.44).*

1. General Development Standards for all Shoreline Environments (SSMP 23.60.152)

There are 18 (23.60.152 A – R) general development standards that apply to all development and uses in all shoreline environments. They require that all shoreline activity be designed, constructed, and operated in an environmentally sound manner consistent with the Shoreline Master Program and with Best Management Practices for the specific use or activity. These measures are required to prevent degradation of land and water. These general development standards state, in part, that all shoreline development and uses must: A) protect the quality and quantity of surface and ground water adjacent to the site, D) not release oil, chemicals or other hazardous materials onto or into the water; E) minimize and control any increase in surface water runoff so that receiving water quality and shoreline properties are not adversely affected; H) All shoreline developments and uses shall be located, designed, constructed and managed to avoid disturbance, minimize adverse impacts and protect fish and wildlife habitat conservation areas including, but not limited to, spawning, nesting, rearing and habitat areas, commercial and recreational shellfish areas, kelp and eel grass beds, and migratory routes. Where avoidance of adverse impacts is not practicable, project mitigation measures relating the type, quantity and extent of mitigation to the protection of species and habitat functions may be approved by the Director in consultation with state resource management agencies and federally recognized tribes; I) All shoreline developments and uses shall be located, designed, constructed and managed to minimize interference with or adverse impacts to beneficial natural shoreline processes such as water circulation, littoral drift, sand movement, erosion and accretion; J) be located, designed, constructed, and managed in a manner that minimizes adverse impact to surrounding land and water uses and is compatible with the affected area; and L) be located, constructed, and operated so as not to be a hazard to public health and safety.

Construction material such as wood used in the aquatic environment poses a risk of introducing toxins into the environment through the leaching of chemicals used to preserve the material. Common chemicals used to preserve wood are copper, zinc, and arsenic. In high levels copper can negatively impact aquatic organisms. Additionally, an inherent risk that exists when humans live over the water is the potential for debris and other deleterious material to enter the aquatic environment. Therefore to ensure conformance with these general development standards, if treated wood is used in structural elements of the proposed retaining wall, it shall meet or exceed the Western Wood Preservers Standards for use of treated wood in the aquatic environment and Best Management Practices shall be required to prevent debris and other deleterious material from entering the water, as conditioned below.

Disturbance of the lakebed sediments is expected because mooring piles will be driven and removed. There is also the potential for construction debris to enter the water during construction, so care will have to be taken to prevent this from occurring.

The proposed work has been determined to be consistent with the general standards for development within the shoreline area. General development standards (SMC 23.60.152) state that Best Management Practices shall be followed for any development in the shoreline environment. These measures are required to prevent contamination of land or water. The Stormwater, Grading and Drainage Control Code (SMC 22.800) places considerable emphasis on improving water quality.

As conditions of approval, the project shall include Best Management Practices:

1. All deleterious material entering the water during the proposed work this material shall be removed immediately and disposed of appropriately. Any sinking debris entering the water shall be entered in a log and retrieved by a diver after construction.
2. An emergency containment plan is required for all toxic material kept on site, including on-site containment equipment and trained personnel.
3. If treated wood is proposed, the wood shall be professionally treated and completely cured using the Best Management Practices developed by the Western Wood Preservers Institute (<http://www.wwpinstitute.org/>) before this wood is used for this project.
4. The owner(s), builder(s), or responsible party(s) shall follow the BMPs developed to prevent debris and other deleterious material from entering the water during demolition and construction.
 - a. If floating debris enters the water during the proposed work this debris shall be removed immediately and stored until it can be disposed of at an appropriate upland facility.
 - b. If heavy (sinking) debris enters the water during the proposed work the location of the debris shall be documented in a log that is kept on site for the duration of the construction work. When construction is complete a diver shall retrieve all debris that has entered the water and sunk during the proposed work.

5. Equipment for the transportation, storage, handling and application of oil, chemicals, or other hazardous materials shall be maintained in a safe and leak-proof condition to prevent release of this material into the water. This equipment shall be checked daily for evidence of leaks, if evidence of a leak is found, the leak shall be contained and further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.
6. Standard Best Management Practices (BMPs) (such as using secondary receptacle containers when handling toxic material so that any spilled material is contained in the second receptacle rather than entering the water and using toxic material so that none of this material enters the water) shall be used to ensure that no petroleum products, other toxic substances, including household chemicals, herbicides pesticides, chemical fertilizers, miscellaneous debris and/or other deleterious materials are allowed to enter or leach into the water.

As a condition of approval in conformance with the standards in SMC 23.60.157, the proponent will be required to notify contractors and subcontractors of these requirements.

2. *Development Standards for piers and docks accessory to residential use (SMC 23.60.204)*

These standards regulate the size and location of piers for residential uses. Piers should be located generally parallel to side lot lines and perpendicular to the shoreline and the proposed pier would be consistent with this code requirement. The proposed pier would be located 15' from the side property line and would extend approximately 85' from the Ordinary High Water Mark. The lot is 100 feet wide and doesn't currently have a pier. The pier would be a maximum of 4'10" wide. The pier would be located 2'9" above the Ordinary High Water Mark. The pier would be accessory to the existing single family residence on this lot. No extensions, boat lifts, diving boards or floats are proposed with this pier.

The proposed pier meets the requirements of SMC 23.60.204.

3. *Development Standards for UR Shoreline Environments (SMC 23.60.570- 23.60.578)*

The development standards set forth in the Urban Residential Shoreline Environment relate to uses, height, lot coverage, view corridors and public access. The proposed pier meets the requirements of these sections.

4. *General Development Standards for Single Family Residential Zone Uses (SMC 23.44)*

Development standards for single family residential zones include lot coverage, height limits, yards, and parking standards. The proposed pier meets the requirements of these sections.

C. THE PROVISIONS OF CHAPTER 173-27 WAC

Chapter 173-27 of the WAC sets forth permit requirements for development in shoreline environments and gives the authority for administering the permit system to local governments. The State acts in a review capacity. The Seattle Municipal Code Section 23.60 (Shoreline

Development) and the RCW 90.58 incorporates the policies of the WAC by reference. These policies have been addressed in the foregoing analysis and have fulfilled the intent of WAC 173-27.

Summary

In conclusion, no additional adverse impacts to the lakebed or water quality are expected, subject to the conditions regarding required planting of native plants and Best Management Practices for construction and restrictions on treated wood products, as listed below. The proposed work at this site will be consistent with the provisions set forth by 90.58 RCW, 173-27 WAC, and Chapter 23.60 SMC also known as the Seattle Shoreline Master Program (SSMP), subject to the conditions listed at the end of this report.

DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

The Shoreline Substantial Development Permit is **CONDITIONALLY GRANTED** subject to the conditions listed at the end of this report.

ANALYSIS - SEPA

The initial disclosure of the potential impacts from this project was made in the annotated environmental checklist (dated September 24, 2009), and supplemental information in the project file submitted by the applicant's agent. The information in the checklist, the supplemental information, and the experience of the lead agency with the review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665 D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority.

The Overview Policy states, in part, "Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation" subject to some limitations. Under such limitations/circumstances (SMC 25.05.665 D1-7) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

Short-term Impacts

Several adopted codes and/or ordinances provide mitigation for some of the identified impacts. The Stormwater, Grading and Drainage Control Code regulates site excavation for foundation purposes and requires that soil erosion control techniques be initiated for the duration of construction. The ECA ordinance and DR 33-2006 and 3-2007 regulate development and construction techniques in designated ECA's. The Street Use Ordinance requires watering streets to suppress dust, on-site washing of truck tires, removal of debris, and regulates obstruction of the pedestrian right-of-way. Puget Sound Air Pollution Control Agency regulations require control of fugitive dust to protect air quality. The Building Code provides for construction measures in general. Finally, the Noise Ordinance regulates the time and amount of construction noise that is permitted in the city. Compliance with these applicable codes and ordinances will reduce or eliminate most short-term impacts to the environment.

Construction Impacts

Construction activities include construction worker commutes, truck trips, the operation of construction equipment and machinery, and the manufacture of the construction materials. These activities themselves result in increases in carbon dioxide and other greenhouse gas emissions which adversely impact air quality and contribute to climate change and global warming. While these impacts are adverse, they are not expected to be significant due to the relatively minor contribution of greenhouse gas emissions from this project and do not warrant mitigation under SEPA.

Historic and Cultural Preservation

The City mapping system indicates that the subject property is located within the Meander Line Buffer, which follows the original shorelines of Seattle. Given that the site is close to the original shoreline, there is a possibility that unknown resources could be discovered during excavation. Therefore, consistent with DPD Director's Rule [2-98](#) on SEPA Environmental Review and Archaeological Resources, and in order to ensure no adverse impact would occur to an inadvertently discovered archaeological significant resource, DPD conditions the project in accordance with the Director's Rule.

Noise

Noise associated with construction of the new pier and driving of piles into the lake bed could adversely affect the surrounding residential uses. Due to the proximity of neighboring residential uses, the limitations of the Noise Ordinance are found to be inadequate to mitigate the potential noise impacts. Pursuant to the SEPA Overview Policy (SMC.25.05.665) and the SEPA Construction Impacts Policy (SMC 25.05.675 B), mitigation is warranted. The hours of construction activity shall be limited to non-holiday weekdays from 7am to 6pm, as conditioned below.

Water Quality Impacts

Disturbance of the lakebed sediments is expected because mooring piles will be driven and removed. There is also the potential for construction debris to enter the water during construction, so care will have to be taken to prevent this from occurring. There is the potential for debris to enter the water during removal and installation of the floating home. Therefore, the project will be conditioned to include Best Management Practices (BMPs) to be employed during construction of the proposed pier.

Long-term Impacts

Long-term or use-related impacts are also anticipated as a result of approval of this proposal including water quality in Lake Washington, and habitat for plants and animals.

Several adopted City codes and/or ordinances provide mitigation for some of the identified impacts, including the Land Use Code and the Shoreline Master Program. Compliance with these applicable codes and ordinances is adequate to achieve sufficient mitigation of most long term impacts and no further conditioning is warranted by SEPA policies, except as noted below.

Plants and Animals

Environmentally critical areas are located on site, including a wildlife and habitat area, and shoreline habitat buffer. The applicant has proposed to plant additional western Washington native plants near the shoreline, as described in the Proposal above. The only vegetation proposed for removal includes invasive non-native plants described on the planting plan included in the Master Use Permit plan set.

The proposed work would be unlikely to result in loss of wildlife habitat and vegetation which have substantial aesthetic, educational, ecological, and/or economic value. Therefore, no additional conditioning is warranted for these items pursuant to SEPA policies.

Summary

The Department of Planning and Development has reviewed the environmental checklist submitted by the project applicant; reviewed the project plans and any additional information in the file; and any comments which may have been received regarding this proposed action have been considered.

As indicated in the checklist and this analysis, this action will result in probable adverse impacts to the environment. However, due to their temporary nature and limited effects as conditioned below, the impacts are not expected to be significant.

DECISION - SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirements of the State Environmental Policy Act (RCW 43.21C), including the requirement to inform the public agency decisions pursuant to SEPA.

[X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030 2C.

[] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030 2C.

CONDITIONS – SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

During Construction

1. Landscaping shall be installed as shown in the Master Use Permit plan set 3010805.

2. All deleterious material entering the water during the proposed work this material shall be removed immediately and disposed of appropriately. Any sinking debris entering the water shall be entered in a log and retrieved by a diver after construction.
3. An emergency containment plan is required for all toxic material kept on site, including on-site containment equipment and trained personnel.
4. If treated wood is proposed, the wood shall be professionally treated and completely cured using the Best Management Practices developed by the Western Wood Preservers Institute (<http://www.wwpinstitute.org/>) before this wood is used for this project.
5. The owner(s), builder(s), or responsible party(s) shall follow the BMPs developed to prevent debris and other deleterious material from entering the water during demolition and construction.
 - a. If floating debris enters the water during the proposed work this debris shall be removed immediately and stored until it can be disposed of at an appropriate upland facility.
 - b. If heavy (sinking) debris enters the water during the proposed work the location of the debris shall be documented in a log that is kept on site for the duration of the construction work. When construction is complete a diver shall retrieve all debris that has entered the water and sunk during the proposed work.
6. Equipment for the transportation, storage, handling and application of oil, chemicals, or other hazardous materials shall be maintained in a safe and leak-proof condition to prevent release of this material into the water. This equipment shall be checked daily for evidence of leaks, if evidence of a leak is found, the leak shall be contained and further use of such equipment shall be suspended until the deficiency has been satisfactorily corrected.
7. Standard Best Management Practices (BMPs) (such as using secondary receptacle containers when handling toxic material so that any spilled material is contained in the second receptacle rather than entering the water and using toxic material so that none of this material enters the water) shall be used to ensure that no petroleum products, other toxic substances, including household chemicals, herbicides pesticides, chemical fertilizers, miscellaneous debris and/or other deleterious materials are allowed to enter or leach into the water.
8. The owner and/or responsible parties are required to notify contractors and subcontractors of these requirements.
9. Work waterward of Ordinary High Water Mark shall be restricted to work windows established by Washington Department of Fish and Wildlife and US Army Corps of Engineers.

10. The use of vibratory hammer for pile installation shall occur as much as possible. Pile installation will occur outside the sensitive early nesting period for nearby bald eagles. Best Management Practices and noise abatement measures such as cushions and bubble curtains shall be utilized in the event impact hammer use is required.
11. Care shall be taken by the owner(s), builder(s), or responsible party(s) to prevent toxic materials, petrochemicals and other pollutants from entering surface water during the proposed repair work. Spill prevention and response plan and material shall be kept at the site for quick response to any toxic spills, such as fuel, at the site.
12. No fascia shall be installed because it blocks natural light from reaching under the pier.
13. Any treatment of the steel or aluminum material on this pier shall be non-leaching and non-toxic to the freshwater environment.

For the Life of the Project

14. Best Management Practices shall be followed.
15. Revegetation plants shall be maintained to ensure 80% survival, as detailed in the Monitoring and Maintenance Plan shown in the Master Use Permit plan set 3010805.
16. No pesticides, insecticides, fertilizers or other chemicals shall be used in maintaining the vegetation at this site.
17. The proposed pier shall include a fully grated deck surface as shown in the Master Use Permit plan set 3010805.

CONDITIONS - SEPA

Prior to Issuance of Master Use Permits:

18. The owner and/or responsible parties shall provide DPD with a statement that the contract documents for their general, excavation, and other subcontractors will include reference to regulations regarding archaeological resources (Chapters 27.34, 26.53, 27.44, 79.01, and 79.90 RCW, and Chapter 25.48 WAC as applicable) and that construction crews will be required to comply with those regulations.

During Construction

19. All construction activities are subject to the limitations of the Noise Ordinance. Construction activities (including but not limited to demolition, grading, deliveries, framing, roofing, and painting) shall be limited to non-holiday weekdays from 7 am to 6 pm. Non-noise generating activities, such as site security, monitoring, weather protection shall not be limited by this condition.

Construction activities outside the above-stated restrictions may be authorized by the Land Use Planner (Shelley Bolser 206-733-9067 or shelley.bolser@seattle.gov) when necessitated by unforeseen construction, safety, or street-use related situations. Requests for extended construction hours or weekend days must be submitted to the Land Use Planner at least three (3) days in advance of the requested dates in order to allow DPD to evaluate the request.

20. If resources of potential archaeological significance are encountered during construction or excavation, the owner and/or responsible parties shall:

- a. Stop work immediately and notify DPD (Shelley Bolser 206-733-9067 or Shelley.bolser@seattle.gov) and the Washington State Archaeologist at the State Department of Archaeology and Historic Preservation (DAHP). The procedures outlined in Appendix A of Director's Rule 2-98 for assessment and/or protection of potentially significant archeological resources shall be followed.
- b. Abide by all regulations pertaining to discovery and excavation of archaeological resources, including but not limited to Chapters 27.34, 27.53, 27.44, 79.01 and 79.90 RCW and Chapter 25.48 WAC, as applicable, or their successors.

Signature: _____ (signature on file) Date: April 8, 2010
Shelley Bolser AICP, LEED AP, Senior Land Use Planner
Department of Planning and Development

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